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AUG 06 2004

OFFICE OF PETITIONS

In re Application of	:	
McEvelly et al.	:	DECISION REFUSING STATUS
Application No. 10/747,634	:	UNDER 37 CFR 1.47(a)
Filed: December 29, 2003	:	
Attorney Docket No. 29505/39547	:	

This is in response to the petition under 37 CFR 1.47(a), filed June 7, 2004.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

On April 9, 2004, applicant was mailed a Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted, requiring a new oath or declaration identifying the citizenship of each inventor, the signatures of inventors McEvelly, Chatterjee, Guo, Nagel and White, and a surcharge. This Notice set a two-month extendable period for reply.

On June 7, 2004, applicant filed the present petition, a declaration signed by five of the six joint inventors, and paid the surcharge for late filing of the declaration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s). The present petition does not satisfy requirement (2).

Applicant has failed to submit an oath or declaration in compliance with 37 CFR 1.63 and 1.64. The declaration is not acceptable because the alteration to the mailing address of Jens Nagel and the residence and citizenship of Rudolf Schusteritsch are not **initialed and dated**.¹ The Manual of Patent Examining Procedure states that it is "improper for anyone, including counsel, to alter, rewrite, or partly fill in any part of the application, including the oath or declaration, after execution of the oath or declaration by the applicant." Furthermore, the Office "will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration."²

Pursuant to Section 603 of the Manual of Patent Examining Procedure, "Deficiencies or inaccuracies in an oath or declaration may be corrected by a supplemental oath or declaration. The supplemental oath or declaration must (1) identify the entire inventive entity, and (2) be signed by all the inventors when the correction relates to all the inventors or applicants (37 CFR 1.42, 1.43, or 1.47), **or by only those inventor(s) or applicants (37 CFR 1.42, 1.43, or 1.47) to whom the corrections relates**. See 37 CFR 1.67(a)."

Accordingly, on renewed petition, applicant must submit a declaration in compliance with 37 CFR 1.63, 1.64, and 1.67 and signed by inventors Nagel and Schusteritsch.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Petitions Attorney**:

¹ "Any interlineation, erasure, cancellation or other alteration of the application papers...should be dated and initialed or signed by the applicant on the same sheet of paper." 37 CFR 1.52(c)(1).

² MPEP 605.04(a).

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Petitions Attorney
Office of Petitions